



**CONSUMER PROTECTION & SAFETY DIVISION**

**WORKSHOP ON  
CRAMMING REPORTING REQUIREMENTS  
(Discussion Paper)**

**Workshop facilitated by  
Gaylee Adell, Jim Howard, Chris Poschl**

**August 11, 2006**

## ***Table of Contents***

I.	Background .....	3
II.	Cramming and Unauthorized Charges.....	5
III.	Inquiry vs. Complaint.....	12
IV.	Who Should Report and Why.....	13
V.	Reporting Requirements and Contents.....	15
VI.	Next Steps.....	17

## ***I. Background***

In Decision (D.) 06-03-013, the California Public Utilities Commission (Commission) directed staff to hold a workshop that discusses how all carriers shall meet the statutory requirement of Public Utilities (P.U.) Code Section 2889.9 which states that carriers will be subjected to reporting requirements regarding their resolution of cramming-related complaints.<sup>1</sup> In Ordering Paragraph 7 of D.06-03-013, the Commission directed the staff: “Within 180 days of the issuance of this decision, staff shall hold a workshop to determine appropriate reporting requirements pursuant to P.U. Code § 2889.9. Afterwards staff shall propose cramming-related reporting requirements that direct carriers to provide, among other items, the number and percentage of cramming complaints that take more than thirty days to resolve.”

On July 17, 2006, the Commission’s Consumer Protection and Safety Division (CPSD) conducted a workshop on Cramming Reporting Requirements in compliance with D. 06-03-013. CPSD staff sought parties’ input during the workshop in answering the following questions:

- I. What are “unauthorized charges”?
  - a. What are considered unauthorized charges?
  - b. When are unauthorized charges considered cramming?
- II. Who should report?
  - a. What is the role of the carrier?
  - b. What is the role of the billing agent?
  - c. Are there unique industry segment issues?
- III. What kind of information should be reported?
  - a. How can we attain consistency in data collection?
  - b. Which cramming complaints should be reported?
  - c. How can complaint resolution status be reported?

Parties either attended the workshop or listened in telephonically. Presiding over the workshop was Commissioner Rachelle Chong. Also in attendance for part of the workshop was Commissioner John Bohn. Those in attendance included: Rhonda

---

<sup>1</sup> See page 92- 93 of D.06-03-013 and, ordering paragraph 7 of D.06-03-013.

Johnson, Dick Fitzmaurice, and Brad Layous of AT&T; Art Jimenez and Chris Witteman of the Commission's Division of Ratepayer Advocates (DRA); Steve Kukta of Sprint; Tina Armstrong, Bill Schulte and Mike Day of CTIA; Cindy Manheim of Cingular Wireless; Leon Bloomfield of T-Mobile; Kurt Rasmussen and Don Eachus of Verizon; John A. Gutierrez of Comcast; Latanya Linzie of Cox Communications; Sarah DeYoung of Caltel; Enrique Gallardo of Latino Issues Forum; Kirstin Diggs of OFC; Christine Maillaux of TURN; George Granger of Cingular; Michael Bagley of Verizon Wireless; and Patrick Rosvall of Small/Mid-sized LEC's; from the Commission's Telecommunications Division: Jack Leutza, Rosalina A. White and Risa Hernandez; from the Commission's Consumer Services and Information Division: Phil Enis; from the Commission's CPSD: Richard Clark, Jeanette Lo, Linda Woods, Duane Filer, and Steve Kadivar; from Commissioner Chong's staff: Robert Haga; from Commissioner Bohn's staff: Bob Lane.

At this initial workshop, participants provided some useful input and information, but it appeared there was significant confusion and questions about the scope of the "cramming" definition, the scope of the data to be reported, and whether the existing landline only rules for subscriber complaints reporting adopted in D.00-11-015 would still continue in light of the new cramming reporting requirement contained in D.06-03-013. On the latter issue, we clarify that in light of D.06-03-013, the Commission intends to propose to repeal in an upcoming proceeding on cramming reporting requirements the cramming reporting requirements adopted in D.00-11-015 because it imposes subscriber complaint reporting only on incumbent local exchange carriers and not other regulated voice providers such as CLECs or wireless carriers. As such, it does not treat similar voice service providers equally and puts an unfair burden on ILECs. We expect in a new Commission decision to put forth a cramming reporting definition that will apply equally to all regulated voice providers and fulfill the requirements of Public Utilities Code Section 2889.9(d).

Certain participants suggested, however, that more direct input and comments can be provided if CPSD staff drafted proposed cramming reporting requirements and circulated them to the parties. This would provide the participants with specific items to

comment on in a subsequent workshop. This approach was agreed to at the end of the first workshop.

Staff submits this Proposed Cramming Reporting Requirements in response to parties' request. A second workshop is scheduled on August 21, 2006, to discuss these draft proposals. After the second workshop, staff will propose cramming-related reporting requirements in a workshop report, consistent with the directives of D. 06-03-013.

In this proposal, staff proposes a definition of "unauthorized charges" and how they relate to cramming, clarifies when an inquiry becomes a "complaint," identifies what entities should report and why, and outlines its proposed cramming reporting requirements.

## ***II. Cramming and Unauthorized Charges***

In proposing cramming reporting requirements, staff sought to define "unauthorized charges." P.U. Code section 2890 (a) states that "[a] telephone bill may only contain charges for products or services, the purchase of which the subscriber has authorized." In D. 06-03-013, the Commission stated that "cramming is the placement of an unauthorized charge on a consumer's phone bill."<sup>2</sup> It is therefore instructive to outline what staff proposes can be considered as an unauthorized charge for cramming reporting purposes.

In defining what unauthorized charges include, staff was guided by references to cramming gleaned from the Federal Trade Commission (FTC), the Federal Communications Commission (FCC), and other state utility agencies.

### **Federal Trade Commission (FTC)**

The FTC defines cramming as: "the inclusion of charges on consumer' telephone bills for services which they had not requested."<sup>3</sup> The FTC explains that cramming occurs when companies violate Section 5 of the FTC Act, which prohibits unfair and

---

<sup>2</sup> D.06-03-013, p. 75

<sup>3</sup> United States v. Locascio, 357 F. Supp. 2d 536 (D.N.Y. 2004).

deceptive practices, by making false and misleading representations about their services.<sup>4</sup> The FTC also refers to cramming in its consumer-oriented website as “unexplained charges on your phone bill for services you never ordered, authorized, received, or used.”<sup>5</sup>

### **Federal Communications Commission (FCC)**

The FCC defines cramming as “the practice of including, placing, or submitting unauthorized, misleading, or deceptive charges for products or services on an end-user consumer’s telephone bill.”<sup>6</sup> In consumer bulletins, the FCC explains, “Crammers rely on confusing telephone bills in an attempt to trick consumers into paying for services they did not authorize or receive, or that cost more than the consumer was led to believe.”<sup>7</sup> The FCC cramming website explains how cramming occurs:

Cramming can also occur if a local or long distance company or another type of service provider does not clearly or accurately describe all of the relevant charges to you when marketing a service. Although you may have authorized the service, you did not understand or were misled about how much it would really cost.”<sup>8</sup>

### **Other States Cramming Definitions**

Staff also notes the following consumer references regarding cramming:

Florida Public Service Commission: “Cramming occurs when charges appear on your monthly telephone bill that you did not authorize – anything from unidentifiable fees to club memberships. These charges are not usually tacked onto your bill by your local phone company, but are placed there by a “third party” billing agent.”<sup>9</sup>

---

<sup>4</sup> <http://www.ftc.gov/opa/1998/07/cramming.htm>

<sup>5</sup> [www.ftc.gov/bcp/online/pubs/services/cramming.htm](http://www.ftc.gov/bcp/online/pubs/services/cramming.htm)

<sup>6</sup> In the Matter of Long Distance Direct, Inc., Notice of Apparent Liability for Forfeiture, 14 FCC Rcd 314 (1998) at 315.

<sup>7</sup> “FCC Consumer Facts,” at <http://www.fcc.gov/cgb/consumerfacts/cramming.html>

<sup>8</sup> The FCC explains how cramming occurs: “FCC Consumer Facts,” at <http://www.fcc.gov/cgb/consumerfacts/cramming.html>

<sup>9</sup> See:

[http://66.102.7.104/search?q=cache:rxJ4nKliykYJ:www.psc.state.fl.us/general/publications/brochure\\_pdf/crambro.pdf+florida+public+service+commission+cramming+occurs+when+charges+appear+on+your+monthly+telephone+bill+that&hl=en&gl=us&ct=clnk&cd=1](http://66.102.7.104/search?q=cache:rxJ4nKliykYJ:www.psc.state.fl.us/general/publications/brochure_pdf/crambro.pdf+florida+public+service+commission+cramming+occurs+when+charges+appear+on+your+monthly+telephone+bill+that&hl=en&gl=us&ct=clnk&cd=1)

Pennsylvania Office of Consumer Advocate: “Cramming is the term used to describe the act of adding charges to your telephone bill for services you did not knowingly authorize such as voice mail service, 800# service or calling cards.”<sup>10</sup>

Illinois Commerce Commission: “Cramming refers to the addition of charges for unauthorized services to a consumer’s phone bill.”<sup>11</sup>

Public Utilities Commission of Ohio: Cramming is the illegal practice of adding charges to your telephone bill for services that you did not order.<sup>12</sup>

New York Public Service Commission: “Cramming is a practice where a company places unauthorized charges for telephone and non-telephone related services on your local telephone bill. Some of these charges may appear on your telephone bill in terms that do not clearly state what service was provided, such as “enhanced services,” “access,” “activation,” or “minimum usage fees.” “<sup>13</sup>

### **Staff Proposal on What to Consider “as Cramming” for Reporting Purposes**

The FCC’s definition of cramming provides consumer protection from unauthorized charges as well as misleading or deceptive charges. Staff is persuaded by this federal view and proposes reporting requirements that capture this level of consumer protection. Staff therefore proposes that the following should be subject to reporting: customer complaints seeking to remove or reduce unauthorized charges.<sup>14</sup> This applies to communications and non-communications charges, and recurring and non-recurring charges that appear on consumer’s telephone bill placed on it by the carrier and/or a third party such as a billing agent.

Staff believes that “unauthorized charges” include the unauthorized addition of services or features to a consumer’s telephone service that a consumer never ordered, authorized or received. These services may be such things as voice mail, caller ID,

---

<sup>10</sup> See: <http://www.oca.state.pa.us/cinfo/cram.htm>

<sup>11</sup> See: <http://www.icc.illinois.gov/docs/tc/020919tccram.pdf>

<sup>12</sup> See: [http://www.puco.ohio.gov/emplibrary/files/media/Publications/Fact\\_Sheets/Utility%20Information%20for%20Ohio%20Senior%20Citizens.pdf](http://www.puco.ohio.gov/emplibrary/files/media/Publications/Fact_Sheets/Utility%20Information%20for%20Ohio%20Senior%20Citizens.pdf)

<sup>13</sup> See: <http://www.dps.state.ny.us/cramming.htm>

<sup>14</sup> See, D.06-03-013, GO 168, Part 4. at B.

special service packages or fee-for-service charges such as 900 calls. Sometimes an unauthorized one-time charge for entertainment services will be placed onto a consumer's phone bill. If a customer terminated a particular service but was still charged for the terminated service, this constitutes cramming. Other times, unauthorized monthly recurring charges are placed onto a consumer's phone bill.

Unauthorized charges would also include situations where a consumer authorized a service, but was misled about the true cost. Unauthorized charges also include situations involving false or deceptive charges. In such situations, the issue often becomes the level of clear disclosure to the consumer of the charge. This is a factual issue.

Other unauthorized charges are initiated in fine print on the back of contests or sweepstakes entry forms. Other examples the FTC cites as ways "crooks get [a] phone number and cram charges on [a] bill" include<sup>15</sup>:

- a) **800 Number Calls.** A consumer calls an 800 number advertised as a free date line, psychic line or other adult entertainment service. A recording prompts the customer to give the customer name and to say "I want the service," or some similar phrase, to get the advertised free service. The consumer may have no opportunity to speak with an operator or ask questions, but the customer is automatically enrolled in a club or service program. The phone number from which the customer called is captured and billed. The customer may not get the "free" service you called for, or the service the customer was actually billed for.
- b) **Contest Entry Forms.** A customer fills out a contest entry form, thinking she or he is entering to win a free prize. In fact, some unscrupulous promoter is using the contest to get that person's phone number, enroll the customer for a calling card or some similar service, and bill her or him for an unauthorized service on her phone bill. The disclosure on the entry form, which may be difficult to comprehend and in fine print, says that by completing the form, the customer authorized the service. The customer may never get the service, just a bill for a service she or he did not mean to authorize.

---

<sup>15</sup> Examples c through i, are taken from the FTC's website, "Cramming Schemes", <http://www.ftc.gov/bcp/online/pubs/services/cramming.htm>



- c) **Direct Mail Sweepstakes.** A consumer receives a sweepstakes promotion in the mail that tells him or her to dial an 800 number to enter or claim a prize. When called, a recording follows an automated script to automatically enroll the caller in a club or service program. The phone number from which the call is placed is captured and billed. Once again, the disclosure on the sweepstakes mailer is very difficult to comprehend and is in fine print, and the service is not received, just a bill.
- d) **"Instant" Calling Cards.** Someone may use a consumer's phone to call an 800 number for an adult entertainment service, and be offered an "instant calling card." The "calling card" isn't an actual card, but is rather an access code based on the phone number from which the call was placed. The card is used to access and bill for the entertainment service. If someone uses a consumer's phone to sign up for such a card, the consumer's phone number will be billed for all purchases of entertainment made using that card, whether or not they are made from that phone.
- e) **Dating Service Calls.** A consumer calls an 800 number advertised as a way to meet local people for free. The consumer is told the date will call the consumer back, or the consumer is asked to enter a code to be "teleconferenced" with the date. What the consumer is not told is that the consumer will be charged a hefty fee for the conversation with the date. Charges for these calls show up on the consumer's phone bill incorrectly labeled as collect or toll charges from a different city.
- f) **International Calls.** Some ads for adult entertainment services list a number starting with 011, 500, or another unfamiliar area code. The ads do not explain that these numbers are for expensive international calls, and that the entertainment provider is making money every minute the caller stay on the line.
- g) **"Free Minutes" Deals.** Ads promising "free time" for a date line, psychic line, or other adult entertainment service. When called, the caller is put on hold but told that he won't be charged for this time. Sometimes, the "hold time" is deducted from the free minutes, and sometimes you may be billed for some of your "hold time" as well as your "talk time."

## **Staff Proposal on What Not to Consider as Cramming for Reporting Purposes**

Staff believes that certain consumer billing complaints do not constitute cramming. With direct dialed telephone services, P.U. Code § 2890 provides that evidence that a call was dialed is *prima facie*<sup>16</sup> evidence of authorization.<sup>17</sup> Other authorized charges may include government-mandated fees, surcharges, or charges on a consumer's bill. Complaints about charges deemed authorized should not be reported. Here, we list some examples of dispute over charges that should generally not be reported as cramming complaints:

1. Charges incurred through a stolen or lost phone: Staff does not consider complaints over charges placed on a stolen phone as alleged cramming. Instead such consumer complaints should be considered complaints over what was done with stolen property. Similarly, a complaint over charges placed on a lost phone is not cramming. Consumers bear the responsibility of notifying the carrier of a lost or stolen phone immediately, or may bear some responsibility for charges not placed by an authorized user before such a report with the carrier is filed.
2. Billing questions: Customer questions over number of minutes of a call or call duration is not cramming. Staff considers these as billing inquiries until and unless the consumer elevates the inquiry to a complaint about the charges being unauthorized (see Inquiry vs. Complaint below).
3. Charges where the customer is unhappy with the service and wishes to cancel or if the customer contends he was mislead about the product. This may be deceptive business practices and subject to further enforcement action, but it is not cramming.

---

<sup>16</sup> "Prima facie" means "at first view" in Latin. It refers to evidence that is sufficient to raise a presumption of fact or establish the fact in question unless rebutted. <http://www.lectlaw.com/def2/p078.htm>

<sup>17</sup> PU Code § 2890(d)2(D) specifically states that "... In the case of a dispute, there is a rebuttable presumption that a unverified charged for a product or service was not authorized by the subscriber and that the subscriber is not responsible for that charge. With regard to direct dialed telecommunications services, evidence that a call was dialed is prima facie evidence of authorization..."

## Staff Proposal on What is Considered as Authorization

In D. 00-11-015,<sup>18</sup> the Commission adopted definitions for subscriber complaint reporting rules. As part of these rules, the Commission adopted the following definitions in Attachment A:<sup>19</sup>

**1. Authorization Required:** Prior to billing or causing to be billed any charge to a subscriber on a telephone corporation bill, the service provider shall obtain the subscriber's authorization. The requirements for written authorizations are set out in P. U. Code § 2890(c).<sup>20</sup> Oral authorizations must contain the same information as written authorizations. All disputed oral and written authorizations for which no record of verification is available are subject to a rebuttable presumption that the charges are unauthorized. With regard to direct dialed telecommunications services, evidence that a call was dialed is *prima facie* evidence of authorization.

**2. Billing for Authorized Charges Only:** Billing telephone companies may bill subscribers only for authorized charges. Billing agents and service providers may not submit, directly or indirectly, charges for billing through a billing telephone company that have not been authorized by the subscriber.<sup>21</sup>

Staff proposes that these subscriber authorization requirements be adopted as part of the cramming reporting requirements.

---

<sup>18</sup> Rulemaking on the Commission's Own Motion to Consider Adoption of Rules Applicable to Interexchange Carriers for the Transfer of Customers Including Establishing Penalties for Unauthorized Transfer; Investigation on the Commission's Own Motion to Consider Adoption of Rules Applicable to Interexchange Carriers for the Transfer of Customers Including Establishing Penalties for Unauthorized Transfer, Attachment A, Page 1, Subscriber Complaint Reporting Rules.

<sup>19</sup> Subscriber Complaint Reporting Rules, page 1. Attachment A:

[http://www.fcc.gov/Bureaus/Common\\_Carrier/Other/cramming/cramming.html](http://www.fcc.gov/Bureaus/Common_Carrier/Other/cramming/cramming.html)

<sup>20</sup> PU Code § 2890(c) state "The commission may only permit a subscriber's local telephone service to be disconnected for nonpayment of charges relating to the subscriber's basic local exchange telephone service, long-distance telephone service within a local access and transport area (intraLATA), long-distance telephone service between local access and transport areas (interLATA), and international telephone service.

<sup>21</sup> D.00-11-015 - *Rulemaking on the Commission's Own Motion to Consider Adoption of Rules Applicable to Interexchange Carriers for the Transfer of Customers Including Establishing Penalties for Unauthorized Transfer; Investigation on the Commission's Own Motion to Consider Adoption of Rules Applicable to Interexchange Carriers for the Transfer of Customers Including Establishing Penalties for Unauthorized Transfer*, OP 1, Subscriber Complaint Reporting Rules, Attachment1, p.1.

### ***III. Inquiry vs .Complaint***

In order to guide reporting entities in providing the Commission with consistent cramming complaint data, staff seeks to distinguish an “inquiry” from a cramming “complaint.” In general, a complaint is an expression of displeasure or a grievance, in the form of any communication, written or oral, that expresses dissatisfaction with a specific entity.

D.06-03-013<sup>22</sup> defines “complaint” in part 4 of the new General Order 168 as any written or oral communication from a person or entity that has been billed for a charge that the person or entity alleges was unauthorized and that was billed, either directly or indirectly, through a telephone company. By contrast, an “inquiry” is an examination into facts or principles (research) and a request for information.

Both complaint and an inquiry can be initiated by the oral or written expression of a grievance. For cramming reporting purposes, staff will use the Commission’s definition of a cramming complaint as “any written or oral communication from a person or entity that has been billed for a charge that the person or entity alleges was unauthorized and that was billed, either directly or indirectly, through a telephone company.”<sup>23</sup>

In contrast, staff views consumer contact regarding general questions about a charge on their bill as an “inquiry.” Although carriers and billing agents should track, record and resolve a consumer contact expressing general dissatisfaction with their bill, these inquiries are not reportable for cramming reporting purposes. Staff recognizes that an inquiry can evolve to a complaint at some point, and would become reportable if and when the consumer expresses their objection to a specific charge or denies a charge or otherwise request the removal or reduction of an unauthorized charge.

Staff will seek further input from workshop participants during the second workshop on how they distinguish an inquiry from a complaint.

---

<sup>22</sup> D.06-03-013 issues revised General Order 168, Market Rules to Empower Telecommunications Consumers and to Prevent Fraud. The definition is contained in the new General Order 168, Part 4. B, page A-19, Rules Governing Cramming Complaints.

<sup>23</sup> D.06-03-013, GO 168, Part 4. at B, “Complaint” definition.

#### ***IV. Who Should Report and Why***

Staff believes that based on the P.U. Code and existing Commission decisions, that billing telephone companies (both wireline and wireless) and their billing agents including third party vendors are required to report cramming data to the Commission.

The Legislature and this Commission have made it clear that billing telephone companies, service providers, and billing agents and any third parties involved in the billing “food chain” share in the responsibility that consumers’ phone bills only include authorized charges. D.06-03-013 states that, “P.U. Code §§ 2889.9 and 2890 were enacted in order to deter cramming and clarify related rights and remedies available to California consumers. The Legislature directed that these laws be read together. The Legislature stipulated that P.U. Code §§ 2889.9 and 2890 apply not only to utilities, but also to non-utility billing agents and other persons or corporations responsible for generating a charge on a subscriber’s phone bill. Thus the Commission may impose penalties on persons or corporations that violate the cramming statutes, even if the violators typically are not subject to our jurisdiction.”<sup>24</sup>

P. U. Code section 2889.9 (d) states:

“The commission shall establish rules that require each billing telephone company, billing agent, and company that provides products or services that are charged on subscribers’ telephone bills, to provide the commission with reports of complaints made by subscribers regarding the billing for products or services that are charged on their telephone bills as a result of the billing and collection services that the billing telephone company provides to third parties, including affiliates of the billing telephone company provides to third parties, including affiliates of the billing telephone company.”

In D.00-11-015,<sup>25</sup> the Commission adopted the following definitions of a billing agent, service provider, and a billing telephone company:

---

<sup>24</sup> D.0603013, pg. 75-76

<sup>25</sup> D.00-11-015, Attachment A.

**Billing Agents:** Any entity which provides billing service for service providers directly or indirectly through a billing telephone company.

**Service Provider:** The person or entity that originates the charge or charges that are billed to the subscriber.

**Billing Telephone Company:** A telephone corporation that bills a subscriber for products and services provided by a third party, including corporate affiliates.

In D.06-03-013, the Commission established new rules governing cramming complaints to cover wireline carriers, billing aggregators, resellers and wireless telephone service providers in a non-discriminatory and equal basis and defined a telephone company as:

**Telephone company:** A telephone company is any telephone corporation (as defined in P.U. Code § 234) operating within California. This term includes resellers and wireless telephone service providers.<sup>26</sup>

These Commission decisions support staff's proposal that billing telephone companies (both wireline and wireless) and their billing agents including third party vendors are required to report cramming data to the Commission.

A billing agent typically has relationships with the telephone company where the telephone company sets the guidelines for customer complaints. The billing agent also monitors consumer inquiries, consumer complaints, and escalated LEC complaints; maintains records regarding complaints and inquiries; adopts action plans to respond to consumer complaints and inquiries; and coordinates investigations with service providers. Therefore, in such relationships, the billing agent possesses customer complaint data that would be responsive to the proposed cramming reporting requirements outlined herein.

In circumstances where telephone companies handle their own customer complaint processing, the telephone companies would possess the required cramming complaint data. What needs further clarification is to what extent, if any, third party service providers take customer complaint calls directly and the resolution of such calls. Staff will obtain more information in this regard from telephone companies during the second workshop and determine the applicable cramming reporting requirements.

---

<sup>26</sup> D0603013, GO 168, Part 4-Rules Governing Cramming Complaints, pg A-20.

## ***V. Reporting Requirements and Contents***

In D.06-03-013<sup>27</sup>, Section 9.3, Adoption of Cramming Rules, specifies that staff is to “...propose cramming-related reporting requirements that direct carriers to provide, among other items, the number and percentage of cramming complaints that take more than thirty days to resolve.”

### **1. Monthly Reporting of all Cramming Complaints**

Staff proposes requiring monthly reports of cramming complaints that are over 30 days from the date of notice of the cramming complaint to the carrier or third party billing agent. In staff’s view, monthly reports should include:

- a. Monthly reports of cramming complaints over 30 days from the date of notice of the cramming complaint to the carrier or third party billing agent (see details in later section).
- b. Aging Report of Unresolved cramming complaints; within the following periods: a) 30 to 60 days, b) 60 to 90 days and c) over 90 days.

### **Contents of Monthly Cramming Complaints Report**

Under the staff’s approach, all billing telephone companies and billing agents should submit a monthly cramming complaint report that contains the following information:

1. the total number of consumer cramming complaints received for that month that remain unresolved after 30 days;
2. the name, address, and telephone number of each entity that is the subject of cramming complaints;
3. the total number of subscribers billed (by working billing telephone number) by each entity for which cramming complaints were received;
4. the total number of cramming complaints, relative to each service provider, that remain unresolved from when the complaint was initially received, within the following time periods:
  - a. between 30 and 60 days;
  - b. between 60 and 90 days; and
  - c. beyond 90 days

---

<sup>27</sup> D.06-03-013, Section 9, Cramming Rules, Subsection 9.3, Adoption of Cramming Rules at 94. (emphasis added).

The reports should be due by the last business day of the following month. It is contemplated that carriers will have 270 days to put in place such reporting scheme from the date the Commission issues a final decision or resolution putting in place this reporting requirement, due to complexities expressed at the workshop as to changing customer service representative databases to accommodate this type of reporting at a state level.

## **2. Staff Proposes a Three-Year Record Retention Requirement**

Staff's current recommendation is that the Commission adopt record retention guidelines similar to that reflected in D. 00-03-020 (as modified by D. 00-11-015), with regards to specifying the information to be maintained concerning cramming complaints; but broadly applied to both wireline and wireless carriers and billing agents, consistent with the direction of D.06-03-013. Specifically, every billing telephone company should maintain accurate and up-to-date records of all customer cramming complaints made to or received by it for charges for products or services provided by the billing telephone company, a third party or its affiliates. Such records should be maintained for three years. Every billing agent should maintain accurate and up-to-date records of all customer cramming complaints regarding charges billed through a billing telephone company made to or received by it. In the case of billing telephone companies, the records should include information on all consumer cramming complaints involving entities that bill directly or indirectly on the billing telephone company's bill.

In the case of billing agents, the records should also include all consumer cramming complaints received for service providers that use the billing agent to bill for the service provider on the telephone corporation bill. These records should include the following information:

1. The subscriber's name;
2. the subscriber telephone number and the unique subscriber identifier, if any;
3. the name of the service provider responsible for the charge complained about;
4. the name of the billing agent or billing agents, if any;



5. the amount of the alleged unauthorized charge and the date the charge was incurred and billed;
6. a description of the product or service billed;
7. the disposition of the dispute;
8. a record of the original subscriber authorization for the charge, if any;
9. the total dollars billed and total amount refunded by the billing telephone company or billing agent for each service provider; and
10. the total number of telephone numbers billed by the billing telephone company or billing agents for each service provider.

### **3. Staff Proposes Certain Opt-Out Provisions**

Staff recommends that the Commission consider the following opt-out provisions:

1. On a monthly basis, a service provider may opt-out of the monthly reporting requirements by submitting a letter to the Director of CPSD stating that there are no reportable complaints for the subject month. The letter should be signed and verified in accordance with Rule 2.4 of the Commission's Rules of Practice and Procedure. The letter shall be submitted within 30 days from the month in which the service provider is seeking the exemption from the monthly reporting requirements.
2. On an annual basis, a service provider may also opt-out of the monthly reporting requirements by submitting a letter to the Director of CPSD setting forth specific reasons as to why it should be exempted from the monthly reporting requirements for the entire subject year. The letter should be signed and verified in accordance with Rule 2.4 of the Commission's Rules of Practice and Procedure. The letter shall be submitted by January 30th for the year in which the service provider is seeking the exemption from the reporting requirements.

## ***VI. Next Steps***

Staff will hold a second workshop on August 21, 2006 to discuss the proposed cramming reporting requirements herein. On September 8, 2006, parties shall file written comments on this proposal and other matters covered during the second workshop. Staff

will issue the final report on recommended cramming reporting requirements on October 13, 2006.